

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1809 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A R KABARIA

Versus

STATE OF GUJARAT

Appearance:

MR Navin Pahwa for Mr. PM THAKKAR for Petitioner
Mr. MA Bukhari for Respondent No. 1, 3
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/02/2000

ORAL JUDGEMENT

Learned advocate Mr.Pahwa is appearing for the
petitioner. Learned AGP Mr. M.A.Bukhari is appearing for
respondents nos. 1 and 3.

By way of this petition, the petitioner has questioned legality, validity and propriety of the action of the respondents in depriving the petitioner of his legitimate right of promotion to the post of Senior Clerk though the posts of senior clerk are vacant and though the petitioner is fully qualified and is senior most person to claim the promotion. The petitioner has challenged the action of the respondents on the ground that the same is arbitrary, unjustified and contrary to the rules. Brief facts leading to the filing of this petition are as under:

The petitioner was appointed to the post of English Typist through employment exchange after appearing in interview on 5.12.1974; that the post on which the petitioner was appointed was a sanctioned post as per Model Rules for Agency under the Government Resolution of the Agriculture, Forest and Cooperation Department dated 15/18.5.1974; that the petitioner has discharged his duties with utmost sincerity and to the best satisfaction of the respondents and has never given any cause of complaint to the respondents. It is the case of the petitioner that the Government of India had set up several Rural Development Agencies such as Small Farmers Development Agencies, Drought Prone Areas Programme Agencies, Small Farmers and Agricultural Labourers Development Agencies etc. in each District. The petitioner has submitted in the petition that for running and managing these agencies, funds were allotted to each district by the Government; that each of these agencies was functioning as society registered under the Societies Registration Act, 1960; that the Government of India, subsequently, decided to bring about merger of these various agencies with a view to promoting a few integrated rural development programmes which was to be extended to all the blocks in the country; that in consonance with the aforesaid decision of the Government of India, the State Government took the decision to revitalize and strengthen the district rural development agency which was formed after the unification of various rural development agencies functioning in each district and each development programmes, namely integrated rural development programme, drought prone areas etc; that the district rural development agency formed in each district was registered under the Societies Registration Act, 1960. The Chairman of the agency is the District Development Officer of the District; that the Government of Gujarat approved the model pattern of administrative machinery for each district rural development agency to implement its various rural development programme, by issuing a

resolution dated 22nd April, 1981; that the staff pattern was sanctioned by the Government for running the district rural development agency and the petitioner was redesignated as clerk cum typist in the sanctioned staff pattern approved by the Government; that on bare perusal of the new staff pattern sanctioned by the Government produced at annexure "B" to the petition, it appears that two posts of senior clerk are sanctioned by the Government vide resolution dated 22.4.1981. It is the case of the petitioner that he is the senior most person and is entitled and eligible for being considered and appointed to the post of senior clerk. However, the respondents have arbitrarily neglected the legitimate claim of the petitioner and have promoted many persons on deputation from the District Panchayat, Amreli. The petitioner has given the names of such persons who have been deputed as senior clerk in the respondent agency while neglecting the claim of the petitioner for the post of senior clerk, in paragraph 5 of the petition. Since the repeated requests and representations were not considered by the respondent authorities, the petitioner has approached this court by means of this petition. The petitioner submits that the identical issues were raised before this Court in special civil application nos. 4722, 4723, 4724 and 4800 of 1981. Vide judgment and order dated 16/16/18-3-1982, this Court (Coram: P.D. Desai, J.) was pleased to hold that the policy adopted by the State is arbitrary and irrational to deprive such employees who are working in the agency of their chance of further promotion by promoting persons from the District Panchayat on deputation. The petitioner has also claimed the same benefit and same treatment on the same line in this petition.

This petition was admitted on 31st August, 1988 and interim relief earlier on 21.4.1987 was ordered to remain continue. In this petition, the respondent authority has filed the reply on 19th June, 1987.

In reply to the petition filed by respondent No. 2, it has been submitted that at present, there is no post of senior clerk lying vacant. It is also submitted that the respondent No. 2 has no authority to recruit and/or promote any employee in the said agency; class III and IV employees are sent on deputation by the concerned district panchayat and class I and II officers are sent on deputation by the State Government. The deponent of the said affidavit in reply has further submitted that that the petition is not maintainable and the petitioner has no locus standi to approach this court; that the respondent no. 2 is not an autonomous body and is not a

State within the meaning of Article 12 of the Constitution; that certain instructions have been issued by the Central Government for the purpose of development of rural programmes. Central Government and State Government give grant of 50% each to the answering respondent. It is further submitted by the deponent that there is a governing body of respondent No.2 and that the respondent no. 2 is not discharging sovereign function of the State. The respondent No.2 has denied that the action is arbitrary, unjust and contrary to Rules as alleged. The respondent no.2 has not admitted that the facts of the special civil applications mentioned by the petitioner in the memo of petition are identical to the facts of the present petition. The respondent NO.2 has admitted that the petitioner was appointed as english typist by the Project Officer of respondent no. 2 on 4.12.1974 as alleged on purely temporary basis and subject to the terms and conditions incorporated in the letter of appointment. It is not disputed that the district rural development agency, draught drawn area programme was converted into district rural development agency by resolution dated 22.4.1981. It is submitted that the petitioner is working as english typist alone. It is denied that the petitioner is entitled for being promoted to the post of senior clerk on the basis that the said post has been converted into typist cum clerk as alleged. It is submitted that the rules regarding recruitment and/or promotion for the post of senior clerk are not in existence and there is no question of promoting the petitioner to the post in question. It is not accepted that the petitioner is eligible for being promoted to the post of senior clerk.

I have heard the learned advocates for the parties. I have also perused the papers brought on record. I have also gone through the judgment and order passed by this court in special civil application nos. 4722, 4723, 4724 and 4800 of 1981. Learned advocate Mr. Pahwa appearing for the petitioner herein has submitted that the matter at issue is covered by the decision of this court in aforesaid petitions. Learned advocate Mr. Pahwa has submitted that the facts of the present petition are identical to the facts of the aforesaid special civil application. He has relied upon paragraph 4 of the petition being special civil application no. 4800 of 1981, from the aforesaid judgment, as under:

"4. Special civil application no. 4800 of 1981:

The petitioner was appointed as clerk in an order made on January 2/3, 1973 by the Chairman of the

Small Farmers Development Agency, Junagadh on a temporary basis. The petitioner resumed duty on January 3, 1973 (See Annexure "C"). By an order dated January 6, 1979 issued by the Chairman of the Small Farmers Development Agency, Junagadh, the petitioner was promoted to the post of Senior Clerk in the pay scale of Rs. 330-560 on a purely temporary basis (see annexure "F"). The petitioner is still continuing to hold the said post. The next higher post to which the petitioner claims promotion is that of Aval Karkun. "

According to the respondents, the appointment was to be made on deputation basis. So far as the appointment to the other post was concerned, following directions were issued as per the Government resolution at annexure "A" page 12 of the petition relevant portion of para 5 of the said resolution reads as under:

"Other posts may be filled up by taking suitable officials on deputation from panchayat or government cadres. In consultation with District Panchayat and Government Departments, the District Agency should prepare a select list of suitable officials for appointment on these posts. "

According to Mr. Pahwa, the question involved in the group of petitions and in the present petition is that according to the established government policy, the posts in question were required to be filled in only by deputation and not by promotion and, therefore, question is required to be examined that it would thus appear that the main substantial basis for decision is that the cause for non promotion is the policy of the Government. The question, therefore, would arise as to whether the respondents' view point with regard to the policy is correct and consequently whether such policy of the government is rational or not.

Learned AGP Mr. Bukhari has submitted that it is the Government policy which is required to be implemented by respondent agency and the respondent agency has no power or authority to recruit or promote any employee in respect of the post in question. Learned AGP Mr. Bukhari has not been able to point out before this court that the decision of this court in aforesaid group of petitions cited by Mr. Pahwa is not applicable to the facts of this case.

After examining the contentions raised by the

petitioner herein and also after examining the decision given by this court in aforesaid group of petitions and having considered the submissions of the learned advocates for both the sides, I am of the view that the facts of the present case are identical to the facts of special civil application no.4800 of 1981. In said decision, this court has examined and scanned the resolution of the Government and after examining this court has rendered the decision in aforesaid group of petitions. Therefore, in light of the observations made by this court in aforesaid group of petitions and the relief granted therein, more particularly the observations made qua special civil application no. 4800 of 1981, the present petition is required to be allowed.

On the basis of the interpretation of the said government resolution made by this court in group of special civil applications nos. 4722 of 1981 and allied matters, the petitioner herein will be entitled for being considered for promotion to the post of senior clerk provided he is possessing the requisite qualification for the post of senior clerk and is satisfying the other criteria for the post in question.

Accordingly, this petition is allowed. The respondents are directed to consider the case of the petitioner herein for promotion to the post of senior clerk provided that the petitioner is, otherwise, eligible and qualified for being appointed to the said post.

Rule is made absolute to the aforesaid extent with no order as to costs.

25.2.2000. (H.K.Rathod,J.)

Vyas